

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

SCOTT WILLIAM ECKERT

Appellant

DOCKET NUMBER WD78163

DATE: March 15, 2016

Appeal From:

Circuit Court of Livingston County, MO
The Honorable Thomas Nichols Chapman, Judge

Appellate Judges:

Division Three
James Edward Welsh, P.J., Thomas H. Newton, J., and Joseph M. Ellis, Sr. J.

Attorneys:

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Counsel for Appellant

Attorneys:

Karen Kramer, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE OF MISSOURI, Respondent, v.
SCOTT WILLIAM ECKERT, Appellant

WD78163

Livingston County

Before Division Three Judges: Welsh, P.J., Newton, J., and Ellis, Sr. J.

After Eckert was convicted of forcible rape, and while his direct appeal was pending, he sent three letters to a niece asking her to talk with the victim and convince her to change her story about what happened to cause her significant internal injuries. Specifically, he wanted the victim to tell her mother that her injuries were the result of jumping on a bed and that she had blamed Eckert due to pressure exerted by a grandmother and therapist and fear because she was not supposed to be in the room jumping on the bed. The State charged Eckert with three counts of the class C felony of victim tampering under section 575.270. As to each count, the State accused Eckert of “purposely attempt[ing] to dissuade BM, a victim of the crime of Forcible Rape, that was charged as a felony on or about June 13, 2008, from supporting her statements against the defendant.” Eckert sought to dismiss the charges on the ground that they did not state an offense. The trial court denied the motions, and a jury convicted him on all counts. Eckert timely sought a judgment of acquittal before and after the close of all evidence, claiming that the evidence was insufficient to sustain his convictions for tampering with a victim. The court sentenced Eckert to seven years of imprisonment on each count to be served consecutively. Eckert appeals.

AFFIRMED.

Division Three holds:

In the first point, Eckert claims that the trial court violated his due process rights by refusing to find him not guilty at the close of the evidence because, when he wrote the letters, he had already been tried and convicted for the offenses committed against the victim, thus prosecution of the rape case had ceased. Under the victim-tampering statute, a person commits this crime if he attempts to prevent a victim from, among other matters, causing charges to be brought and prosecuted or “assisting in the prosecution thereof.” The word “prosecution” is not defined under section 575.270, and no Missouri court has yet determined whether a prosecution, for purposes of victim tampering, ceases upon conviction. We hold that it does not.

Eckert cites a number of dictionary or case law definitions for “prosecution,” most of which focus on the process of bringing charges against a defendant and trying them. Because it is possible, on direct appeal or by means of habeas corpus, to obtain a re-trial of criminal charges in Missouri following conviction, we believe that a prosecution does not cease on conviction. Eckert intended to secure a new trial and prosecution by writing letters that sought to have the victim change her story. Thus, prosecution had not ceased when he was convicted. Our holding is supported by case law stating that a prosecution abates when the criminal defendant dies while a direct appeal is pending. In other words, if a criminal conviction does not become final on

appeal during the defendant's lifetime, the prosecution then ceases and it is as if he had never been convicted.

In the second point, Eckert argues that the court violated his fair trial rights by refusing to dismiss the State's amended information for failure to charge an offense. He claims that the State omitted an essential element of the letters' purpose, and the stated purpose was not among the possible ways a person can be guilty under section 575.270. We disagree.

The amended information cites the correct statute. It charges Eckert with attempting to dissuade the victim "from supporting her statements against the defendant." While this does not quote the statutory language of "assisting in the prosecution," we find that it was functionally equivalent and sufficiently charged an essential element of the offense.

Therefore, we affirm.

Opinion by Thomas H. Newton, Judge

March 15, 2016

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